

MINUTES

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

Thursday, November 1, 2001

Division Two

A095568 -- Amy Tucker v. Joe Shekou et al.

The appeal is dismissed. Costs on appeal to respondent. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Four

A092109 -- Annette Dobbs v. Nob Hill Properties, Inc.

The judgment is modified to award damages to Dobbs in the Amount of \$5,000. As modified the judgment is affirmed. The parties are to bear their own costs. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Friday, November 2, 2001

Division One

A094157 -- In re Danielle B., a Person Coming Under the Juvenile Court Law. Department of Children and Family Services v. Robert B.

The jurisdictional order is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Four

A092663 -- David Mellinger et al. v. Tigor Title Insurance Company of California.

The judgment is reversed. The matter is remanded for trial in accordance with the views expressed in this opinion. Plaintiffs shall recover their costs on appeal. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Certified for Partial Publication.)

Division Five

A094107 -- Maria C. Ramirez v. Mallory Shure.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Monday, November 5, 2001

Division One

A096518 -- New Education Development Systems, et al. v. Last Resort, Inc.

By the Court: Respondent's motion for sanctions is denied. Respondent's motion to dismiss the appeal is granted and the appeal is dismissed. Marchiano, Acting P.J.

Division Four

A093641 -- The People v. Ignacio Hernandez.

The assault conviction is reversed; the balance of the judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A094992 -- June Jordan v. Rumrill Gardens et al.

Plaintiff June Jordan in propria persona purports to appeal from the order granting the motion of defendants Rumrill Gardens et al. for summary judgment. An order granting summary judgment motion is not an appealable order. (Stolz v. Wong Communications Limited Partnership (1994) 25 Cal.App.4th 1811, 1816.) Accordingly, the appeal is dismissed. Defendants' request for sanctions is denied. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, November 5, 2001 (continued)

Division Five

A096143 -- Shawn Lamont Johnson v. The Superior Court of Solano County; The People, R.P.I.

Let a peremptory writ of mandate issue commanding respondent superior court to vacate its order denying petitioner's *Faretta* motion, and thereafter enter a new order granting the motion, consistent with the views expressed in this opinion. This decision shall be final as to this court five days from the date of filing, "[t]o prevent any further delay of the proceedings below. . . ." (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683; Cal. Rules of Court, rule 24(d).) By separate order filed this date, we have denied the remainder of the petition, asserting additional grounds of error. The previously issued stay will dissolve upon the issuance of the remittitur. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Tuesday, November 6, 2001

Division Two

A093320 -- Storage Technology Corporation v. Samuel B. Abrams et al.

For the reasons stated, the judgment is reversed, and this case is remanded to the trial court for further proceedings. Costs on appeal are awarded to appellant. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A096698 -- Elnora Terrell v. The Superior Court of Alameda County; Donald A. Kirby et al., R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

A096243 -- Audrey Timmis et al. v. The Superior Court of Alameda County. Kaiser Permanente et al., R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied. Kline, P.J.

Division Four

A094022 -- The People v. Far West Insurance Company.

The order of forfeiture appealed from is vacated; bail is ordered exonerated. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Certified for Publication.)

A094229 -- The People v. Juan Luis Martinez.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

Tuesday, November 6, 2001 (continued)

A093845 -- County of Napa v. Norman Henson.

And, on the merits, we see no harm to appellant's interests flowing from the 1996 support judgment entered against him. Appellant not only admitted his paternity of Alexander in his answer to the amended complaint for support, but the final judgment reserved payment of any support until appellant's release from confinement. With those two matters—both central to a child support proceeding—taken care of, there was little enough left in contention. Last, we note that appellant has delayed inordinately in seeking relief from the 1996 judgment, waiting almost four years. That lengthy delay, coupled with the absence of material harm to appellant from the support judgment and no evidence of extrinsic fraud, lead us to conclude that the order of the trial court should be, and it is, affirmed.

Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A093923 -- Rene Ernest Peinado v. C. Lance Barnett, as Registrar of Contractors, etc.

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A091861 -- Sierra West Bank v. Chak Wong.

By the Court: Order Modifying Opinion and Denying Rehearing. It is ordered that the opinion filed herein on October 16, 2001, be modified in the following particulars: (See order.) This modification does not effect a change in the judgment. Reardon, Acting P.J. (Not for Publication.)

Division Five

A091866 -- The People v. William Michael Casner et al.

The judgments of conviction are affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

COURT OF APPEAL
STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

MINUTES

Wednesday, November 7, 2001

Court convened at 9:00 a.m. in its Courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California.

Present: McGuinness P.J., Corrigan J., Parrilli J., and I. Calanoc, Deputy Clerk.

- A086149 Jean Deleage,
 v.
 Saab Automobile A.B., et al.
Cause called and argued by Frank Hinman, counsel for appellants, Ernest Thayer, counsel for respondent and Alan Jang, counsel intervenor. Cause ordered submitted.
- A091870 William Y. Moores,
 v.
 Permanente Medical Group, et al.
Cause called and argued by appellant pro per William Moores and Shirley Paine, counsel for respondent. Cause ordered submitted.
- A087644 Elva Marlene Kuhnle,
 v.
 Richard Charles Kuhnle.
Cause called and argued by appellant pro per Richard Kuhnle and respondent pro per Elva Marlene Kuhnle. Cause ordered submitted.
- A094288 Winslow Rouse,
 v.
 Jeannine Deer.
Cause called and argued by appellant pro per Winslow Rouse and respondent Jeannine Deer. Cause ordered submitted.

COURT ADJOURNED

Wednesday, November 7, 2001

Division Four

A090889 -- Willie M. Green v. Dillingham Construction N.A., Inc.

The Court: The petition for rehearing filed by appellant on October 24, 2001, is denied. The opinion filed herein on October 9, 2001, is ordered modified as follows: (See order.) There is no change in the judgment. Reardon, Acting P.J.

A086991 -- Patricia Henley v. Philip Morris Inc.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, P.J., Kay, J. (Certified for Partial Publication.)

Thursday, November 8, 2001

Division One

A096013 -- Gregory A. Bond, et al. v. Larry Paul.

By the Court: Appellant Larry Paul's motion to vacate the dismissal order this court issued on September 25, 2001 is granted and the appeal is hereby restored to active status. Appellant's opening brief is to be served and filed within 30 days from the filing of the record in this court. Stein, Acting P.J.

A093084 -- Paul C.P. Cheng v. Richard K. Chi.

There is a complete lack of factual support for appellant's speculations as to his father's actions and intent. The summary judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A092800 -- Emilio M. Porcalla v. California Division of Gambling Control et al.

The order denying the mandate petition is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A092807 -- Christine Rohde v. Pittsburg Unified School District et al.

The award of costs is reversed with regard to the \$1,350 of expert witness fees and the \$4,852.42 of discovery referee fees. The award of costs is affirmed with regard to the \$3,350.82 of deposition costs. The parties shall bear their own costs on appeal. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

A090804 -- The People v. Felimon Franco Torres.

By the Court: The petition for rehearing is denied. Stein, Acting P.J.

Division Two

A096699 -- Bank of America N.A., et al. v. The Superior Court of San Francisco County; Antonio Castillo, R.P.I.

By the Court: The petition for writ of mandate/prohibition/stay is denied. Kline, P.J.

Thursday, November 8, 2001 (continued)

A096737 -- Gregory A. Bogan v. The Superior Court Lassen County, People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/prohibition is denied without prejudice to petitioner seeking relief, if any, in the Third District. Kline, P.J.

A093764 -- Gilbert T. Graham v. Magno J. Ortega.

The judgment is affirmed. Costs are awarded to Graham. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A091187 -- Jeannette L. McNaughton v. United Airlines, Inc., et al.

We affirm. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A092520 -- In re Vincent C., a Person Coming Under the Juvenile Court Law. The People v. Vincent C.

The juvenile court's finding that appellant's offense was one described in section 707(b) is reversed. This matter is remanded for a new hearing on the issue of his personal use of a firearm during the course of conspiracy to carjack. Appellant must be present at that hearing, or he must knowingly and intelligently waive his personal attendance at the hearing. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A090661 -- The People v. Frederick L. Johnson.

By the Court: the petition for rehearing is denied. McGuinness, P.J.

A088619 -- The People v. Walter Vincent Robbie, Jr.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

Thursday, November 8, 2001 (continued)

Division Five

A093799 -- In re Steven Caswell, on Habeas Corpus.

Order Modifying Opinion and Denying Rehearing; Supplemental Opinion Upon Denial of Rehearing. By the Court: It is ordered that the opinion filed herein on October 10, 2001, be modified as follows: (See order.) The petition for rehearing is denied. The modification does not effect the change in the judgment. Jones, P.J. (See supplemental opinion by Stevens, J.) (Certified for Publication.)

A089443 -- The People v. Gary Cecil.

The judgment is reversed. Jones, P.J. We Concur: Stevens, J., Richman, J.* (Not for Publication.)

*Judge of the Alameda County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, November 9, 2001

Division Five

**A094578 -- In re Joshua W., a Person Coming Under the Juvenile
Court Law. The People v. Joshua W.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

Tuesday, November 13, 2001

Division One

A094809 -- In re Lemanuel C., a Person Coming Under the Juvenile Court Law. The People v. Lemanuel C.

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P. J., Swager, J. (Not for Publication.)

A094696 -- In re D. L. B., a Person Coming Under the Juvenile Court Law. The People v. D. L. B.

We affirm the order. Swager, J. We concur: Stein, Acting P. J., Marchiano, J. (Not for Publication.)

A096708 -- The People v. Andreas Martin.

By the Court: On October 26, 2001, appellant filed a notice of appeal and application for certificate of probable cause after conviction by a plea of nolo contendere. Superior court denied his application for certificate of probable cause. The notice of appeal does not indicate that the appeal is based on grounds (1) occurring after reentry of plea which do not challenge its validity, or (2) involving a search or seizure issue, the validity of which was contested by a motion made pursuant to Penal Code section 1538.5. Accordingly, the appeal is inoperative. (Pen. Code, § 1237.5; Cal. Rules of Court, rule 31(d).) Stein, Acting P.J.

A095448 -- Richard Simms v. San Francisco Housing Authority.

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extensions of time, and having failed to show good cause for relief from default, the appeal filed June 15, 2001, is dismissed. (See Cal. Rules of Court, rule 10(c).) Swager, Acting P.J.

Division Two

A096783 -- In re James Samuel Kor, Jr., on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Tuesday, November 13, 2001 (continued)

A091829 -- E.G. Craig v. Chicago Title Insurance Company et al.

We affirm the judgment. Respondents are awarded costs on appeal.
Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A093167 -- In re Ryan K., a Person Coming Under the Juvenile Court Law. The People v. Ryan K.

The juvenile court's orders are affirmed. Kline, P.J. We Concur:
Lambden, J., Ruvolo, J. (Not for Publication.)

A093045 -- In re Joseph M., a Person Coming Under the Juvenile Court Law. The People v. Joseph M.

The jurisdictional and dispositional orders are affirmed. Ruvolo, J. We
Concur: Kline, P.J., Lambden, J. (Not for Publication.)

A096439 -- Sudi Pebbles Trippet v. The Superior Court of Cont Costa County; People of the State of California; R.P.I.

By the Court: The petition for writ of prohibition/mandate is denied.
Kline, P.J.

A093494 -- In re Penisha W., a Person Coming Under the Juvenile Court Law. The People v. Penisha W.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J.,
Ruvolo, J. (Not for Publication.)

Division Three

A094288 -- Jeannine Deer v. Winslow C. Rouse.

The November 9, 2000 order denying Rouse's motion to vacate the
restraining order is affirmed. The appeal from the February 16, 2001 order
denying Rouse's motion for reconsideration is dismissed. McGuiness, P.J. We
Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Tuesday, November 13, 2001 (continued)

Division Four

A091937 -- The People v. Salvador A. Rodriguez.

The judgment is affirmed and the matter is remanded to the trial court for the award of appropriate presentence custody credits. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Division Five

A093357 -- Kayla Lashley, a minor, etc. v. East County Gymnastics et al.

The judgment is affirmed. Respondents shall be awarded costs on appeal. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A092568 -- The People v. Emmanuel McCowan.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A095235 -- In re Dion R. et al., a Person Coming Under the Juvenile Court Law. Napa County Health and Human Services v. Shavon V. et al.

In light of the stipulation for reversal, the remittitur shall issue forthwith. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Wednesday, November 14, 2001

Division One

A090791 -- Coast Commercial Bank v. Attilio Quartaroli, et al.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Three

A096336 -- Alan James Fowler v. The Superior Court of Sonoma County; The People, R.P.I.

Let a peremptory writ of mandate issue directing respondent superior court to vacate the previously imposed state prison sentence and to resentence Fowler in accordance with the views expressed in this opinion. In the interest of justice, our decision is immediately final as to this court. (Cal Rules of Court, rule 24(d).) Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

A087644 -- In re the Marriage of Elva Marlene Kuhnle and Richard Charles Kuhnle.

The judgment is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

A093095 -- The People v. Stanley Alexander Ferrell.

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A091673 -- The People v. Charles Edward Jones.

The judgment is affirmed. Appellant's request for additional presentence credits is denied without prejudice. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Wednesday, November 14, 2001 (continued)

A093461 -- The People v. Reynaldo Torres.

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Division Five

A093970 -- Ingret Bruns v. Leroy Henry, Jr., et al.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

A094695 -- In re Sithone K., a Person Coming Under the Juvenile Court Law. The People v. Sithone K.

The order adjudging defendant to be a ward of the court is affirmed, but the matter is remanded to the juvenile court for an express finding pursuant to Welfare and Institutions Code section 702 on whether the offense under Penal Code section 12101, subdivision (a), was a felony or a misdemeanor. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

A092463 -- The People v. Ramon Adolfo Vallecillo.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Thursday, November 15, 2001

Division One

A092268 -- Christina Lockett, a Minor, etc., et al. v. Budget Rent-A-Car.

The judgment is reversed. Costs to appellant. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A094277 -- Lisa M. Montgomery v. Safeco Insurance Company of America.

The judgment is affirmed. Costs are awarded to respondent. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A093683 -- Mary E. Ingham v. Luxor Cab Company.

For the foregoing reasons, the judgment is reversed and the matter remanded to the superior court for further proceedings consistent with this opinion. Appellant is awarded her costs on appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Certified for Publication.)

MINUTES

CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Wednesday, November 15, 2001

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, California. Present: Kline, P. J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

A090311/
A090545 Rainer Joachim Faerber,
 v.
 The Hyde Law Corporation et al.
Cause called and argued by Michael Dietrick, counsel for appellant, and Barry Zoller, counsel for respondent. Cause ordered submitted.

A093236/
A093237 Gerald Pannone et al.,
 v.
 City of Brisbane et al.
Cause called and argued by Gerald Pannone, in propria persona, and Steven Baird, counsel for respondent. Cause ordered submitted.

A092479 The Nippon Fire & Marine Insurance Company, Ltd., et al.,
 v.
 Pedus Security Services, Inc.;
 Con-Way Western Express, Inc.
A093984 Con-Way Western Express, Inc.
 v.
 Pedus Security Services, Inc.
Cause called and argued by Joseph Geri, counsel for appellant, and Walter Schneider, counsel for respondent.

Court recessed until 1:30 p.m.

Court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Ruvolo, J. and I. Santos, Deputy Clerk.

Thursday, November 15, 2001 (continued)

Division Three

A091870 -- William Y. Moores v. Permanente Medical Group et al.

The order denying appellant's petition for writ of mandate is affirmed.
McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Five

A094966 -- The People v. Sharon Brewer

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.
(Not for Publication.)

A094894 -- In re Jahmal H., a Person Coming Under the Juvenile Court Law. The People v. Jahmal H.

The orders of the juvenile court are affirmed. Stevens, J. We Concur:
Jones, P.J., Simons, J. (Not for Publication.)

Friday, November 16, 2001

Division One

A095453 -- Guardianship of Stephan F., A minor. Herman B. v. Stephanie M.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A093088 -- The People v. Charles D. Ilyin.

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

A090410 -- The People v. Teiquon Lavell Lewis.

Therefore, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A093247 -- Ricardo Leyva v. N. Fry.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A093585 -- Ricardo Leyva v. N. Fry.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A093846 -- Ricardo Leyva v. N. Fry.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

A095029 -- James McBride, et al. v. Estrada & Thompson, et al.

A095939 -- James McBride, et al. v. Estrada & Thompson, et al.

By the Court: Appellants' motion to consolidate appeal numbers A095029 and A095939 is granted for purposes of briefing, argument and decision. Both appeal numbers shall appear on all documents filed in this court. Appellants' consolidated opening brief is due within 15 days of the date of this order. Stein, Acting P.J.

Friday, November 16, 2001 (continued)

A093202 -- The People v. Ryan A. Workman.

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

A093168 -- In re Jose G., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. Jose G.

The court did not err in ordering termination of Father's parental rights and referring Jose for adoption at the section 366.26 hearing. We affirm. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A092922 -- The People v. Joseph Keel.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

A092635 -- Lannie Staniford v. Acordia, Inc. et al.

We have concluded the court erred in granting summary judgment as to Staniford's claim of gender discrimination in connection with her application for the position of manager of the Northern California region out of the Rancho Cordova office. The court properly granted summary judgment/summary adjudication for Acordia as to Staniford's other claims. The judgment is reversed as to the grant of summary judgment upon Staniford's claim of gender discrimination in connection with her application for manager of the Northern California region out of the Rancho Cordova office and the matter is remanded for further proceedings on that claim. The award of costs below is reversed and the cost issue remanded to the trial court pending the outcome of proceedings below. In all other respects, the judgment is affirmed. Staniford is awarded her costs on this appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Friday, November 16, 2001 (continued)

Division Three

A090032 -- In re Marriage of Irene and Louis Drapeau. Irene Conlin Drapeau v. Louis Claude Drapeau.

By the Court: Order Certifying Publication. The written opinion which was filed on October 30, 2001, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is therefore ordered that it be published in the Official Reports. McGuiness, P.J.

Division Four

A091622 -- The People v. Kathleen Marie Buder.

The restitution order is affirmed in part and reversed in part. The cause is remanded for further proceeding consistent with this opinion. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A091925 -- The People v. Jack Daniels.

The judgment is affirmed. The petition for habeas corpus is denied. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

Monday, November 19, 2001

Division One

A093891 -- In re Adrian M., a Person Coming Under the Juvenile Court Law. The People v. Adrian M.

The order adjudicating appellant a ward of the court pursuant to Welfare and Institutions Code section 602 and placing him at the youth ranch is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.).

Division Two

A091636 -- The People v. Joe Louis Lea.

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

A092434 -- The People v. Frank Samuel Melonzi.

The judgment is affirmed, and this case is remanded to the trial court so that it can properly calculate Melonzi's custody credits and issue an amended abstract of judgment. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A093081 -- Travelers Casualty and Surety Company v. American Equity Insurance Company.

The opinion filed October 18, 2001, is hereby ordered to be published. Kline, P.J.

A093195 -- Steven Warren et al. v. Neil R. Kelley.

The judgment is affirmed. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Tuesday, November 20, 2001

Division Two

A091896 -- The People v. Pablo E. Bonilla Asprilla.

The court is ordered to issue a corrected abstract of judgment to reflect appellant's presentence credits of 122 days of custody credits and 18 days of conduct credits, and to forward the corrected abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

A092504 -- Flying Dutchman Park, Inc. v. City and County of San Francisco.

The judgment is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

Division Four

A094474 -- Harry W. Low, as Insurance Commissioner, etc. v. Golden Eagle Insurance Company; Arnette Optic Illusions, Inc.

The order is reversed and the matter is remanded to the trial court with instructions to enter an order denying Arnette's application. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

A090180 -- The People v. Protho Mathis.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A093377 -- Edward O.C. Ord v. Fireman's Fund Insurance Company.

The judgment is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

MINUTES
CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR
Tuesday, November 20, 2001

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Kay, J.; Channing Hoo, Deputy Clerk; CHP Officer Daniel Mendias, Bailiff.

A093335 Ethan Berry
 v.
 Kim Walker
Cause called. In pro per appellant Ethan Berry argued. No appearance by, or on behalf of, respondent. Cause submitted.

A094612 John Rivera et al.
 v.
 Henry Rivera
Cause called. Eric Dzubur argued for appellants John Rivera et al. William Burns argued for respondent. Cause submitted.

A093671 Riche Penny Vahle et al.
 v.
 Jill E. Barwick
Cause called. Jessica R. Flores argued for appellants Vahle et al. Thomas B. Gill argued for respondent. Cause submitted.

A093279 Tom Easton et al.
 v.
 Jim Maready
Cause called. W. J. Osborne argued for appellants Easton et al. John M. Vrieze argued for respondent. Cause submitted.

The Court adjourned at 10:36 a.m.

Tuesday, November 20, 2001 (continued)

Division Five

A091909 -- The People v. Zachary Terry Harris, Sr.

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.
(Not for Publication.)

Wednesday, November 21, 2001

Division Two

A092609 -- In re Robert Boben, Deceased.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A096233 -- Letiona M. v. The Superior Court for the County of Contra Costa; Contra Costa County Department of Social Services, R.P.I.

The petition is denied on the merits. (Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888 [subsequent challenge by appeal barred]; § 366.26, subd. (l)(1).) Given the nearness of the December 12, 2001 hearing date, our decision is final as to this court immediately (rule 24(d)). Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

A091221 -- Anita Walia v. Aetna, Inc., et al.

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Certified for Partial Publication.)

A094273 -- The People v. Jeremy Justin Maxwell.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Division Five

A094828 -- Marion Reynold Stogner v. The Superior Court of the Contra Costa County; The People, R.P.I.

The alternative writ is discharged, the stay is lifted, and the petition is denied. Simons, J. We Concur: Jones, P.J., Stevens, J. (Certified for Partial Publication.)

Monday, November 26, 2001

Division One

A090665 -- The People v. Tony Walkinhawk, Jr.

We find no reversible error occurred in appellant's trial and affirm the judgment. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A094650 -- In re Tina G., a Person Coming Under the Juvenile Court Law. Sonoma County Human Services Department v. George G.

The appeal is dismissed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

Division Five

A092148 -- The People v. Hassan Ameer Smartt.

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Tuesday, November 27, 2001

Division Two

A096762 -- Michael Wayne Hunter v. The Superior Court of San Mateo County. The People of the State of California, R.P.I.

By the Court: The petition for writ of mandate/stay is denied. Kline, P.J.

A093101 -- The People v. Corey L. Smith.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J.
(Not for Publication.)

Division Four

A093335 -- Ethan Berry v. Kim Walker.

The order is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

A093671 -- Richa Vahle et al. v. Jill E. Barwick.

The judgment is reversed. The trial court is directed to enter an order denying Barwick's motion for summary judgment. The Vahles are awarded their costs on appeal. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J.
(Certified for Publication.)

Wednesday, November 28, 2001

Division One

A095632 -- In re Terry N., a Person Coming Under the Juvenile Court Law. The People v. Terry N.

The order adjudicating appellant a ward of the court pursuant to Welfare and Institutions Code section 602 and placing him on probation in the custody of his parents is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A094360 -- The People v. Daniel P. Bryant.

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A096899 -- In re Mohammed Hussein, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

A096840 -- Marjorie Knoller v. The Superior Court of San Francisco County; People of the State of California, R.P.I.

By the Court: The petition for writ of prohibition/stay is denied. Petitioner seeks an order sealing all of the exhibits. Petitioner failed to segregate or redact reference to the portions of the record sealed by the trial court from the remainder of the exhibits. Since the sealed materials are improperly bound with the remainder of exhibits, the clerk of this court shall return all the exhibits to petitioner. (Cal. Rules of Court, rule 12.5; *Champion v. Superior Court* (1988) 201 Cal.App.3d 777, 788-789.) Kline, P.J.

A096798 -- Robert Noel v. The Superior Court of San Francisco County; People of the State of California, R.P.I.

By the Court: The petition for writ of prohibition/stay is denied. Kline, P.J.

Wednesday, November 28, 2001 (continued)

A096901 -- In re Carmon Warren, on Habeas Corpus.

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Division Three

A092435 -- The People v. Jorge Canaca.

The judgment and sentence are affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.) (Not for Publication.)

A092176 & A093177 -- In re Rebecca H. et al., Persons Coming Under the Juvenile Court Law. Lake County Department of Social Services v. Roberta A.

The orders entered at the dispositional hearing and the section 366.26 hearing are reversed. The order denying Roberta's motion to replace the children's counsel is also reversed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A094400 -- The People v. Conrad Joseph Velez.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

A091078 -- The People v. Emile DeWeaver.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Division Four

A093279 -- Tom Easton et al., Individually and as Successors in Interests, etc. v. Jim Maready, as Sheriff, etc., et al.

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Wednesday, November 28, 2001 (continued)

A094405 -- Craig K. Martin v. Rich Szeto et al.

The judgment is reversed. Appellants are to recover their costs on this appeal. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

A094612 -- Estate of Carmen A. Rivera, Deceased.

The judgment is affirmed. Costs are awarded to respondent. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Division Five

A096414 -- Aiken, Kramer & Cummings, Incorporated v. The Superior Court of Sonoma County; Howard Francis Pitzer et al., R.P.I.

No abuse of discretion having been shown, the petition for writ of mandate/prohibition is denied. The parties shall bear their own costs. (Cal. Rules of Court, rule 56.4.) Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Thursday, November 29, 2001

Division Two

A094308 -- In re Lance H., a Person Coming Under the Juvenile Court Law. The People v. Lance H.

The order of commitment to the CYA is affirmed. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Division Three

A087196 -- The People v. Malik Howse et al.

The matter is remanded to the trial court to amend the abstract of judgment to grant West one additional day of presentence conduct credit. In all other respects the judgment is affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

A089085 -- The People v. Lepoleon McLemore.

A094257 -- In re Lepoleon McLemore, on Habeas Corpus.

The writ of habeas corpus is granted. Appellant's no contest plea is set aside. Any motions granted in light of the plea and the judgment based upon the plea are vacated. The matter is remanded to the trial court for proceedings consistent with the views expressed in this opinion. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

A093979 -- In re the Marriage of Muhammad and Amal Hawwa.

Amal Zenati Hawwa v. Muhammad Hawwa.

By the Court: The petition for rehearing is denied. McGuinness, P.J.

A089677 & A090165 -- The People v. Joseph Ussery. The People v. Kevin Jack Blackmon.

The judgments are affirmed. Corrigan, J. We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

Thursday, November 29, 2001 (continued)

Division Five

A094866 -- Joel Alcarmen v. Morequity, Inc., et al.

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.
(Not for Publication.)

Friday, November 30, 2001

Division One

A096373 -- Jeffrey Adams, et al. v. Albert Schneider, et al.

By the Court: The motion to dismiss the appeal is granted and the appeal is dismissed. Stein, Acting P.J.

A094157 -- In re Danielle B., a Person Coming Under the Juvenile Court Law. Department of Children and Family Services v. Robert B.

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on November 2, 2001, be modified as follows: (See order.) [There is no change in the judgment.] Appellant's petition for rehearing is denied. Stein, Acting P.J. (Not for Publication.)

A094448 -- Abdul Qudus, et al. v. Jupiter Asset Company.

By the Court: Appellant's having filed a request for dismissal in this court, the appeal is dismissed. Stein, Acting P.J.

A091186, A094052 -- Estate of Abel Bruno Spirtelli, Deceased.

We reverse the judgment and remand for a determination of the appropriate amount of damages, if any, suffered by Vanessa due to the White's concealment of Debra's written statement. Appellant is entitled to costs on appeal. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

A093530 -- Joanne S. Evans et al. v. Alexander Anolik et al.

The judgment is affirmed. Respondents shall recover their costs on this appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

A093703 -- Robert E. Morris v. Jerry L. Harper, as Director, etc.

The Court: The written opinion which was filed on October 31, 2001, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Kline, P.J. (Certified for Publication.)

Friday, November 30, 2001 (continued)

A093755 -- John Roe v. The State of California et al.

The judgment is reversed and the matter remanded for proceedings consistent with the views expressed herein. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Certified for Publication.)

A092655/A092774 -- George Clifford White et al. v. Salomon Smith Barney Inc., et al.

The order appealed from is reversed and the case remanded to the trial court with directions to enter an order compelling arbitration as to the disputes regarding the remaining two accounts. Costs on appeal are awarded to appellants. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

A086900 -- The People v. Floyd Collins.

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P., Parrilli, J. (Not for Publication.)

A092993 -- The People v. Kirk David Hamilton.

The judgment and sentence are affirmed. The matter is remanded to the trial court for amendment of the abstract of judgment to reflect that restitution shall be made to the actual victim and not to the Victim Restitution Fund. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

A093080 -- Talya K. et al. v. Wiley Edward Umstead.

The judgment is reversed in part and affirmed in part. The trial court shall modify the judgment to strike (1) the punitive damages award of \$1 million and (2) the declaration of a restitution judgment as defined under Probate Code section 15305.5. The parties are to bear their own costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Friday, November 30, 2001 (continued)

A079216 -- The People v. Thuan Wu.

A079699 -- The People v. Victor Diep.

The judgments of conviction as to appellants Wu and Diep are affirmed.
McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

**A095562 -- In re D.Z., a Person Coming Under the Juvenile Court
Law. Contra Costa County Social Services Agency v. Ginger Z.**

The order terminating parental rights is affirmed. Reardon, Acting P.J. We
Concur: Sepulveda, J., Kay, J. (Not for Publication.)